

V.F.


**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

RECEIVED 07/944,739 09/14/92 KYLE D 1496-124A

 E. ANTHONY FIGG  
ROTHWELL, FIGG, ERNST & KURZ  
555 13TH STREET, N.W., STE. 701-E  
WASHINGTON, D.C. 20004

12M1

JORDAN.K

APT 100

DATE RECEIVED

1205

DATE MAILED

04/16/93

 This is a certified copy of the original application as filed with the  
Commissioner of Patents and Trademarks.

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

 A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(C) ARE PART OF THIS ACTION:**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.  | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-66 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-66 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

Art Unit 1205

Claims 1-66 are pending in this application.

The amendment received on December 21, 1992 has been entered.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-66 are rejected under 35 U.S.C. § 103 as being unpatentable over Japanese Patent Application #196,255(AL) and PCT Application # W089/00606 (AL') in view of Clandinin et al. (AA) and Traitler et al. (AI).

The claims appear to be drawn to processes, compositions and nutritional supplements for enriching infant formulas or milk by adding polyunsaturated fatty acids from microbial, plant and fish oil sources. JPA #196,255 teaches the process of adding microbial oils produced by Mortierella bacteria to supplement milk for infants (see pages 4-5 and 7-8). The microbial oils

Art Unit 1205

contain polyunsaturated fatty acids such as gammalinoleic acid (GLA), arachidonic acid (ARA) and eicosapentaenoic acid (EPA) (see pages 4-5 and 7-8). PCT Application # WO89/00606 teaches the supplementation of infant and adult nutritional formulas with microbial oils containing the polyunsaturated fatty acids docosahexaenoic acid (DHA) and EPA (see pages 3-5). The microbial oils are obtained from the fungi, Pythium and from the microalgae, Nitzschia and Cryptocodium (see page 5). The claimed subject matter differs from the primary references in claiming the addition of GLA obtained from plant and fish oils. To supplement infant formulas with GLA obtained from plant and fish oils would have been obvious in view of Clandinin et al. and Traitler et al. Clandinin et al. teaches the addition of fatty acids from fish oil to infant formula (see column 2, line 61 - column 3, line 8 and column 6, line 8 - column 7, line 17). Traitler et al. teach the addition of GLA to infant formula wherein the GLA is obtained from black current oil (see column 3, lines 21-61). The choice of various ratios for the ingredients is deemed to be nothing more than the optimization of the composition which is within the skill of the artisan. The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. The remaining references listed on the enclosed PTO-1449 are cited to show the state of the art.

Serial No. 07/944,739

-4-

Art Unit 1205

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jordan whose telephone number is (703) 308-4611.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Frederick E. Waddell  
Supervisory Patent Examiner  
Group 120

JORDAN:jd *KJ*  
April 15, 1993